Order Code RS21387
Updated January 3, 2007

CRS Report for Congress

United States-Southern African Customs Union (SACU) Free Trade Agreement Negotiations: Background and Potential Issues

Danielle Langton
Analyst in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

Negotiations to launch a free trade agreement (FTA) between the United States and the five members of the Southern African Customs Union (SACU) (Botswana, Lesotho, Namibia, South Africa, and Swaziland) began on June 3, 2003. In April 2006, negotiators suspended FTA negotiations, launching a new work program on intensifying the trade and investment relationship with an FTA as a long term goal. A potential FTA would eliminate tariffs over time, reduce or eliminate non-tariff barriers, liberalize service trade, protect intellectual property rights, and provide technical assistance to help SACU nations achieve the goals of the agreement. This potential agreement would be subject to congressional approval. This report will be updated as negotiations progress.

On November 4, 2002, United States Trade Representative (USTR) Robert B. Zoellick notified Congress of the Administration's intention to launch negotiations for a free trade agreement (FTA) with the Southern African Customs Union (SACU), comprised of Botswana, Namibia, Lesotho, South Africa, and Swaziland. This agreement would be the first U.S. FTA with a Sub-Saharan African country.

The first round of negotiations for the SACU FTA began on June 3, 2003, in Johannesburg, South Africa. The negotiations were initially scheduled to conclude by December 2004, but the deadline was pushed to the end of 2006 after negotiations stalled in late 2004 and resumed in late 2005. The talks continued to move at a slow pace until April 2006, when U.S. and SACU officials decided to suspend negotiations and instead begin a longer term joint work program. This new work program, called a Trade and Investment Cooperation Agreement (TICA), will reportedly aim to address a broad range of trade and investment issues, and may serve as a building block toward a future FTA.

Several possible rationales exist for the negotiation of an FTA with SACU. One impetus derives from Sec. 116 of the African Growth and Opportunity Act (AGOA) (Title I, P.L. 106-200), in which Congress declared its sense that FTAs should be negotiated

Report Documentation Page	*Form Approved* *OMB No. 0704-0188*

1. REPORT DATE **03 JAN 2007**	2. REPORT TYPE	3. DATES COVERED **00-00-2007 to 00-00-2007**

4. TITLE AND SUBTITLE **United States-Southern African Customs Union (SACU) Free Trade Agreement Negotiations: Background and Potential Issues**	5a. CONTRACT NUMBER 5b. GRANT NUMBER 5c. PROGRAM ELEMENT NUMBER
6. AUTHOR(S)	5d. PROJECT NUMBER 5e. TASK NUMBER 5f. WORK UNIT NUMBER
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) **Congressional Research Service,The Library of Congress,101 Independence Ave, SE,Washington,DC,20540-7500**	8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)	10. SPONSOR/MONITOR’S ACRONYM(S) 11. SPONSOR/MONITOR’S REPORT NUMBER(S)

12. DISTRIBUTION/AVAILABILITY STATEMENT
Approved for public release; distribution unlimited

13. SUPPLEMENTARY NOTES

14. ABSTRACT

15. SUBJECT TERMS

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT **unclassified**	b. ABSTRACT **unclassified**	c. THIS PAGE **unclassified**	**Same as Report (SAR)**	**6**	

with sub-Saharan African countries to serve as a catalyst for trade and for U.S. private sector investment in the region. Such trade and investment could fuel economic growth in Southern Africa, by creating new jobs and wealth. SACU member countries have achieved the most robust export growth under AGOA, and an FTA may expand their access to the U.S. market. An FTA may also encourage the continued economic liberalization of the SACU members, and it could move SACU beyond one-way preferential access to full trade partnership with the United States. Finally, although SACU is a customs union, its members' investment and regulatory regimes are not fully harmonized. A comprehensive FTA with the United States could force SACU to achieve greater harmonization.

A potential U.S.-SACU FTA is of interest to Congress because: (1) Congress will need to consider ratifying any agreement signed by the parties; (2) provisions of an FTA may adversely affect U.S. business in import-competing industries, and may affect employment in those industries; and (3) an FTA may increase the effectiveness of AGOA and bolster its implementation. On January 9, 2003, a bipartisan group of 41 Representatives wrote to Ambassador Zoellick to support the beginning of FTA negotiations with SACU.

The U.S. business community has also shown interest in a U.S.-SACU FTA. The U.S.-South African Business Council, an affiliate of the National Foreign Trade Council, announced the creation of an FTA advocacy coalition in December 2002. The Corporate Council on Africa, a U.S. organization dedicated to enhancing trade and investment ties with Africa, also supports the negotiations. For these business groups, a primary benefit of an FTA with SACU would be to counteract the free trade agreement between the European Union and South Africa, which has given a price advantage to European firms. The FTA could also provide an opportunity to address the constraints on U.S. exports to SACU countries, such as relatively high tariffs, import restrictions, insufficient copyright protection, and service sector barriers.[1] Some U.S. businesses have reportedly expressed skepticism about an FTA with SACU, citing concerns over corruption and inadequate transparency in government procurement, particularly in South Africa.[2]

On December 16, 2002, the interagency Trade Policy Staff Committee, which is chaired by the USTR, held a hearing to receive public comment on negotiating positions for the proposed agreement. Several groups representing retailers, food distributors, and metal importers supported the reduction of U.S. tariffs on SACU goods that an FTA would bring. Others representing service industries and recycled clothing favored negotiations to remove tariff and non-tariff barriers in the SACU market. Yet other groups opposed the additional opening of U.S. markets to SACU goods or sought exemptions for their products. They included the growers and processors of California peaches and apricots, the American Sugar Alliance, rubber footwear manufacturers, and producers of silicon metal and manganese aluminum bricks.

Some U.S. civil society organizations are concerned that a SACU FTA could have negative consequences for poor Southern Africans, citing potential adjustment costs for

[1] The United States Trade Representative, *2005 National Trade Estimate Report on Foreign Trade Barriers,* page 551.

[2] "South Africa Trade Pact Meets Business Skepticism," *Inside U.S. Trade,* January 17, 2003.

import-competing farmers, poor enforcement of labor rights, privatization of utilities, and increased restrictions on importing generic drugs to treat HIV/AIDS.

Background

The South African Customs Union consists of Botswana, Lesotho, Namibia, South Africa, and Swaziland: five contiguous states with a population of 51.9 million people encompassing 1.7 million square miles on the southern tip of the African continent. Although this figure represents less than 1% of the population of sub-Saharan Africa, SACU accounts for one-half of the subcontinent's gross domestic product (GDP). Wide differences exist among the economies of SACU. While South Africa has developed a significant manufacturing and industrial capacity, the other countries remain dependent on agriculture and mineral extraction. The grouping is dominated by South Africa, which accounts for 87% of the population, and 93% of the GDP of the customs area. SACU member states had combined real GDP of about $158 billion in 2005.[3]

SACU is the United States' second largest trading partner in Africa behind Nigeria- whose exports are almost exclusively petroleum products. Merchandise imports from SACU totaled $6.8 billion in 2005, a 2% decrease from 2004 and a 172% increase from 1996.[4] They were composed of minerals such as platinum, diamonds, and titanium, textiles and apparel, vehicles, and automotive parts. The largest declines in U.S. imports from SACU from 2004 to 2005 occurred in iron and steel, apparel, and vehicles. U.S. exports to SACU have grown relatively steadily since 1996. Major U.S. exports to the region include aircraft, vehicles, computers, medical instruments and construction and agricultural equipment. The 2005 merchandise trade deficit fell to $2.7 billion from $3.8 billion in 2004.

The United States ran a services trade surplus with South Africa (the only member of SACU for which service data are available) with exports of $1.42 billion and imports of $0.92 billion in 2005.[5] Services trade between the United States and South Africa has increased steadily over the last decade, with U.S. exports increasing 68% since 1996, and service imports from South Africa increasing by 69% during the same period. The stock of U.S. foreign direct investment in South Africa totaled $3.59 billion in 2005 and was centered around manufacturing, chemicals and services. The stock of South African investment in the U.S. stood at $361 million in 2005.[6]

FTA negotiations with SACU may result in the first U.S. trade agreement with an existing customs union. SACU is the world's oldest customs union; it originated as a customs agreement between the territories of South Africa in 1889. The arrangement was

---

[3] The World Bank, *World Development Indicators.* In constant 2000 U.S. dollars.

[4] Goods data compiled by U.S. International Trade Commission. U.S. imports for consumption calculated as customs value; U.S. domestic exports as FAS (free alongside ship) value.

[5] *Bureau of Economic Analysis* [http://www.bea.gov/bea/di/1006serv/tab2b.xls]. Accessed December 29, 2006. Services figures are calculated from current account data and thus are not directly comparable to goods data above.

[6] *Bureau of Economic Analysis,* [http://www.bea.gov/bea/international/ii_web/timeseries7-2.cfm] Accessed December 29, 2006. Figures are historical-cost basis.

formalized through the Customs Agreement of 1910 and was renegotiated in 1969. In 1994, the member states agreed to renegotiate the treaty in light of the political and economic changes implicit from the end of the apartheid regime. The renegotiated agreement was signed on October 21, 2002 in Gaborone, Botswana, and it is now being implemented.

The 2002 Agreement. The 2002 Agreement provides for greater institutional equality of the member states. Its three key policy provisions are: the free movement of goods within SACU; a common external tariff; and a common revenue pool. It also provides more institutional clout to Botswana, Lesotho, Namibia, and Swaziland (BLNS) in decision-making by creating a policymaking Council of Ministers. The agreement enhances the existing Customs Union Commission, and it creates a permanent Secretariat to be based in Windhoek, Namibia. The Agreement also renegotiated the terms for disbursement of the common revenue pool, which accounts for a large portion of government revenue in the BLNS countries. There is concern that certain countries may receive less revenue as a result of the renegotiated agreement, and are improving their tax collection to make up the potential lost revenue. Recent estimates indicate SACU payments accounted for 62% of government revenue in Lesotho, 53% in Swaziland, 33% in Namibia, and 16% in Botswana in 2000.[7]

SACU Tariff Structure. The 2002 Agreement expands BLNS policy influence by creating a Tariff Board to recommend changes on customs levels and policy, using the current SACU tariff schedule as a starting point. A 2003 WTO Trade Policy Review[8] of SACU member states examined the tariff structure and trade posture of the customs union. It noted that the South African tariff structure, which was still the basis for the SACU tariff, was relatively complex, consisting of specific, *ad valorem*, mixed compound and formula duties. However, the South African government has embarked on a tariff rationalization process to simplify the tariff schedule, to convert tariff lines to *ad valorem* rates, and to remove tariffs on items not produced in the SACU. According to the USTR, the complexity of the tariff regime has made it necessary for some U.S. firms to employ facilitators to export to South Africa.[9] The WTO found applied MFN tariffs averaged 11.8% in manufacturing, 5.5% in agriculture, and 0.7% in mining and quarrying. These average tariffs represent a reduction from the previous WTO review in 1998, when MFN tariffs averaged 16%, 5.6%, and 1.4%, respectively. However, tariffs are often bound[10] much higher, with some bindings as high as 400%.

---

[7] *Africa South of the Sahara, 2003 Edition* (London: Europa Publications, 2002), pp. 83, 532, 704, 1020.

[8] World Trade Organization, "Trade Policy Review: Southern African Customs Union, Report by the Secretariat," (WT/TPR/S/114), March 24, 2003, pp. *ix-xi*.

[9] U.S. Trade Representative, *2002 Foreign Trade Barriers*, p. 381.

[10] A bound tariff rate is a rate which a country agrees not to exceed because of trade commitments, such as those made in the WTO. An applied tariff rate is a rate that is actually imposed on goods.

Progress of the Negotiations

The FTA negotiations with SACU were deadlocked for most of 2005, with very little or no progress made. A negotiating round was held in September 2005, and plans were made to continue to hold rounds about every eight weeks. Discussions took place early in 2006, but observers agreed that the prospect for a completed U.S.-SACU FTA was dim. The FTA negotiations would have to be completed by the end of 2006 in order for Congress to consider implementing legislation before the expiration of Trade Promotion Authority (TPA) in 2007. In April 2006 U.S. and SACU trade officials called off the FTA negotiations in favor of a longer term trade and investment work plan, called a Trade and Investment Cooperation Agreement (TICA). The TICA will establish a working group to address issues such as customs, trade facilitation, intellectual property rights, and investment. If a TICA can successfully resolve some of the more difficult issues from the FTA negotiations, an FTA may be possible in the future.[11]

Observers have cited several reasons for the halt in FTA negotiations. First, the United States and SACU did not agree on the scope of the negotiations. Per their mandate from Congress to pursue comprehensive FTAs, U.S. negotiators attempted to proceed with negotiations including intellectual property rights, government procurement, investment, and services provisions. However, SACU officials reportedly argued for these provisions to be excluded from the negotiations. They called for making market access commitments first, and then negotiating the other areas. Now that Congress has extended the AGOA benefits to 2015 through the AGOA Acceleration Act of 2004 (P.L. 108-274), there may be less incentive for SACU countries to complete an FTA with the United States. Also, the United States and SACU held different views on how to include certain industrial sectors in the negotiations. The United States preferred what is called a negative list, where all industries are negotiable unless specifically excluded. Meanwhile, SACU preferred a positive list, where the industries to be included in the negotiations are specified in advance, and additional industries may be included in the agreement over time. Finally, the United States and SACU differed on issues concerning labor rights and environmental regulations. Some observers have speculated that South Africa may be leery of negotiating issues that are included in the current WTO negotiations, so as not to influence their positions in the WTO.[12]

Former USTR Robert Zoellick has stated that the United States recognizes that SACU is still an emerging entity. It has not developed harmonized policies on many of the issues that would be included in an FTA, which may add to the challenges of negotiating an FTA.[13]

---

[11] "U.S., SACU Agree to Create 'Framework' but Free Trade Agreement Now Longer Term," *International Trade Reporter,* April 20, 2006.

[12] "Business Must Not Miss This Boat," *Business Day (Johannesburg),* December 15, 2005.

[13] "U.S.-SACU Free Trade Negotiations Put on Hold; New Mechanism Being Created," *International Trade Reporter,* December 16, 2004.

Table 1. U.S. Merchandise Trade with SACU Countries, 2005

U.S. Imports		U.S. Exports	
2 digit HTS Category	**Imports**	**2-digit HTS Category**	**Exports**
Precious Metals, of which, -Platinum -Diamonds	$2,866 million -$1,864 million -$932 million	Vehicles and Parts	$836 million
Iron and Steel	$517 million	Machinery and Mechanical Appliances (includes construction equipment and computers)	$793 million
Knitted Apparel and Clothing	$448 million	Electrical Machinery, Equipment, and Parts (includes telecommunications equipment.)	$298 million
Machinery and Mechanical Appliances (primarily catalytic converters)	$317 million	Aircraft and Parts	$267 million
Ores Slag and Ash	$310 million	Optical, photographic, cinematographic, measuring, precision, medical, and surgical instruments and parts	$248 million
Vehicles and parts	$295 million	Special Classification/ Low value	$230 million
Apparel and Clothing, not knitted	$253 million	Organic Chemicals	$142 million
Inorganic Chemicals	$227 million	Precious Stones, Metals	$124 million
Organic Chemicals	$210 million	Mineral Fuels and Oils	$120 million
Aluminum Products	$159 million	Plastics	$115 million
Special Classification/ low value exports	$121 million	Miscellaneous Chemicals	$113 million
Articles of Zinc	$85 million	Pharmaceutical Products	$64 million
Edible Fruits and Nuts	$75 million	Toys, Games, and Sports Equipment	$52 million
Articles of Iron and Steel	$71 million	Cereal (primarily rice, wheat, corn)	$46 million
Beverages, Spirits, and Vinegar	$66 million	Paper and Paperboard	$44 million
All Other	$770 million	All Other	$1,052 million
Total*	$6,796 million	Total	$4,102 million

Source: U.S. International Trade Commission.

* Figures may not add precisely due to rounding.